IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

CWP.No.4 of 2001.

Reserved on 16.8.2007.

Date of Decision :.5th September, 2007.

Ajay Kumar Ohri. ..Petitioner.

Versus:

National Insurance Co. and another. ..Respondents.

Coram:

The Hon'ble Mr.Justice Sanjay Karol,Judge.

Whether approved for reporting?[1]

For the petitioner: Mr.Neeraj Gupta, Advocate.

For Respondents. Mr.A.K.Sharma, Advocate.

Sanjay Karol,J .

The present writ petition has been filed, inter alia, praying for the following reliefs:

> (i) That the respondents be directed to fix the pension and other retiremental benefits of the petitioner as per the salary statement of June, 1999 of the petitioner in which the basic salary of the petitioner was Rs.4070/- and the total emoluments were Rs.8915.92.

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

(ii) That the respondents be directed to pay all the arrears and other retiremental dues to the petitioner immediately.

(iii) That the respondents be directed not to recover the amount from the retire mental dues of the petitioner as per the letter of the respondents dated 7.2.2000 and the recoveries effected on 29th August, 2000 and 11th September, 2000, Annexure P-5 & P-6 may please be quashed as illegal.

(iv) That the respondents be directed to pay the arrears of pension and retiremental dues along with 18% interest and exemplary cost"

Petitioner was employed with the respondents and was lastly working as Development Officer Grade-I and drawing a salary of Rs.8,915.92 (basic salary of Rs.4070/-). The respondents floated a Voluntary Retirement Scheme and the petitioner in terms of his letter dated 6th April, 1999 opted for the same. Petitioner's request for voluntary retirement was accepted in terms of the respondents' letter dated 30th June, 1999 with immediate effect. He was relieved on 4th July, 1999 and vide letter dated 5th July, 1999, his last salary was also released.

Pending settlement of terminal benefits including monthly pension vide letter dated 9th February, 2000, petitioner was informed that a sum of Rs.1,82,327/-, in terms of para-11 of the General Insurance (Rationalization of Pay Scales and other Conditions of Service of Development Staff) Scheme, 1976 (hereinafter referred to as `the Pay Scheme), Rs.1800/- festival

advance and Rs.1400/- flood advance was due and recoverable from him. The petitioner was asked to pay the aforesaid sums immediately in order to enable the respondents to release a sum of Rs. 99,388/- admittedly lying with the respondents as provident fund. Shell shocked, the petitioner promptly refuted the same vide letter dated 16th February, 2000. The details of the aforesaid amount due to the petitioner are given in the respondents' letter dated 29th August, 2000. Further vide letters dated 11th September, 2000 and 14th November, 2002, petitioner was informed that his pensionery dues were duly adjusted by the respondent towards the amount due from him, thus leaving a balance sum of Rs.21,442/- still due from him which he was asked to pay the same .

Learned counsel for the petitioner has assailed the aforesaid action of the respondents on the ground that before his retirement petitioner was never informed of any of the arrears due and payable by him to the respondents. The learned counsel has also seriously refuted the averments made in the counter affidavit and have emphasized that at no point of time any letter or warring, as required under `the Scheme', was ever issued to the petitioner. According to him, as per the counter affidavit the dues pertain between the year of 1993 to 1999 which in any case was time barred. The respondent ought to have initiated recovery proceedings and since he was allowed to retire and receiving his salary it cannot be said that any amount was due.

Per contra, learned counsel for the respondents has argued that the recovery is towards the decrement of the petitioner's

performance in accordance with the provisions of the “Pay Scheme”. According to him, the basic pay of the petitioner in June 1999 was Rs.3610/- and his gross emoluments were Rs.7712.70 only and not Rs.8,950.92 as has been alleged by the petitioner. Petitioner was asked to improve his performance vide various letters placed on record as Annexures:R-3 to R-5 and due to his nil performance within the stipulated period, the competent authority was liable to apply decrements on the basic pay in terms of the provisions of Para-11 of the said ` Scheme’. The right to recover dues is not time barred as the accounts had to be reconciled at the time of processing of his terminal benefits. Learned counsel for the respondents has drawn my attention to the various letters (Annexures: R-3 to R-5) issued to the petitioner to contend that the action taken by the respondents is not without prior notice.

Pertinent to mention that petitioner had also filed a CWP.No.237/1989 before this Court, which did not touch the subject matter of the present writ petition and vide order dated 1st August, 1999 the interim orders passed in the said writ petition were modified and the respondents were permitted to take action against the petitioner for any of his acts subsequent to the date of modification of the order. The writ petition, however was dismissed on 5th June, 1997 . But it is a common case of the parties that the decision of the said writ petition has no bearing whatsoever on the present writ petition.

Dues which are sought to be recovered pertain to the period 1993 to 1999. Annexures:R-3 to R-5 are the letters dated 14th October, 1996, 24th July, 1998 and 31st March, 1999 respectively. The said letters cannot be said to be a show cause notice, on the basis of

which the respondents have determined and adjudicated the decrements under the `Scheme' No doubt, petitioner has been asked to improve his performance. But, however, right from 1993 till the date of his retirement at no point in time, he was asked to show cause as to why the determination and adjudication of amount in accordance with the `Scheme' be not done. Even prior to his retirement, no show cause notice was issued to him.

These letters pertain to the period prior to having opted for voluntary retirement under the `Scheme' flouted by the respondents. The petitioner's application was duly processed and permission accorded and not only that his salary was also released. The respondents' action was much after the date of retirement of the petitioner. Why no action was taken at earlier point in time has not been sufficiently responded by the respondents. The action taken by the respondents entails civil consequences, however, the same is in violation of the principles of natural justice. Looking from any angle, in my view, it cannot be said that sufficient notice was given to the petitioner before taking any action as contemplated under the said `Scheme'.

Therefore, without going into the other issues raised by the learned counsel for the parties, on this short ground alone, the action taken by the respondent of determining the decrement in accordance with `the Scheme' and also deducting the same from the pension of the petitioner is held to be bad in law and the letters dated 9th February, 2000 (Annexure:P-3), 29th August, 2000 (Annexure:P-5), 11th September, 2000 (Annexure:P-6) and 14th November, 2000 (Annexure:P-7) are accordingly quashed.

However, since the matter is not being decided on merits, in the interest of justice, it is directed that the respondents shall issue a show cause notice to the petitioner and after affording due opportunity of hearing shall decide the same by passing a reasoned order, within a period of four months from today. Since the issue of decrements and the recovery of dues would be pending, the authority would not be obliged to release the amount of pension admittedly due and payable to the petitioner till the matter is decided by the respondents.

The writ petition is accordingly disposed of.

(Sanjay Karol),J.

September 5, 2007(R)